

**BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

JAMES D. SHARPE,

Petitioner.

OAH No. 2011010242

SI-2011-7

**DECISION GRANTING THE
PETITION**

This matter was heard by a quorum of the California Board of Accountancy (Board) on January 28, 2011, in Irvine, California. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. The record was closed and the matter was submitted for decision, following which the Board met in an executive session and decided the matter after the hearing.

James D. Sharpe (Petitioner) was present and was represented by Jeff Kravitz, Esq.

Antoinette Cincotta, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. On September 23, 1983, the Board issued Certificate No. 38745 to Petitioner.

2A. The Board, by Default Decision and Order, effective March 14⁶, 1994, revoked ms 4-4-11.
Petitioner's certificate in Board case number AC-92-39. Although no cost award was included in the Default Decision and Order, it was established that the Board had incurred costs totaling \$3,092.62 investigating and prosecuting that matter. Petitioner does not object to reimbursing these costs to the Board as a condition precedent to reinstatement.

2B. The cause for discipline was as follows. Petitioner was grossly negligent in his preparation of audit reports for a local municipality for the fiscal years which ended June 30, 1987, and June 30, 1988. Deficiencies included the omission of prescribed general purpose financial statements, improperly formatted statements of revenue and expenditures, omission of required footnote disclosures, omissions of opinions regarding supplementary information, omissions of reports on internal control structure, and failure to document audit planning. By these acts, Petitioner violated Business and Professions Code section 5100, subdivision (c).

3. The petition for reinstatement was filed with the Board on or about October 28, 2010; it is timely and meets all jurisdictional requirements.

4. There is no evidence that Petitioner has committed any subsequent acts which would be violations of the pertinent laws related to the Board's licensees or which would be considered grounds for denial of an application for a license.

5. Since the revocation of his certificate 17 years ago, Petitioner has remained gainfully employed in positions of trust that were related to the accounting field, i.e., acting as the controller of a food company and then a bottling company. He established a good track record in those jobs for diligence, competence, and honesty.

6. Petitioner submitted evidence of 231 hours of continuing professional education completed in 2005, 2010 and 2011. The Board views the variety of courses and number of hours taken during that period as satisfactory.

7. Various character reference letters were submitted in favor of Petitioner, including two from licensed certified public accountants who recommend the reinstatement of Petitioner's certificate. Letters from Petitioner's past two employers were also submitted, which portray Petitioner as competent, diligent and honest. A letter was also submitted by one of Petitioner's former college professors, who has known Petitioner for several years, and who praises Petitioner's ability and character. Finally, letters were submitted by two individuals who have worked with Petitioner in charitable causes and who highly recommend reinstatement of his certificate.

8. When Petitioner committed his misconduct, he was a young man who had just started working on his own and had not functioned as a public accountant for long. His work for the local municipality in question was done first at an extremely reduced rate, and later pro bono. By his own admission, Petitioner had little experience in auditing government agencies, so he was unprepared to handle that project. He has learned from his mistakes. Since then he has worked with other certified public accountants, who were role models. That experience has helped Petitioner develop a better understanding of the level of integrity and professionalism required in public accounting. He has also tried to stay current on the latest developments in the field, including a special focus on tax work, an area in which he would like to focus in the future. As a result, he will not undertake any public accounting project unless he feels he can do it properly.

9. The Board is impressed by Petitioner's ready acceptance of responsibility for his past misconduct. In his petition, and while testifying during the hearing, Petitioner appeared remorseful and expressed contrition for his past mistakes.

LEGAL CONCLUSIONS

1. *Burden of Proof.* The burden in this petition for reinstatement of a revoked license rests with Petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

2. *Standard of Review.* Business and Professions Code section 5115 provides the Board with authority to reinstate a revoked license for reasons the Board deems sufficient. In doing so, the Board may impose appropriate conditions, including restrictions on the scope of professional practice. (Bus. & Prof Code, § 5115, sub. (c).)

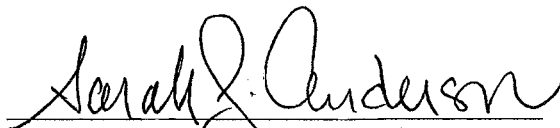
3. *Disposition.* In this matter, Petitioner has clearly and convincingly established that it would be consistent with the interests of public protection for his revoked certificate to be reinstated. Petitioner was a young man with little accounting experience when he committed his misconduct. He got involved in a project that was beyond his experience. Since then, Petitioner has established an impressive track record through his employment and charitable work. He has demonstrated that he has learned greatly from his past mistakes and has matured to the extent that it is doubtful he will get involved in an accounting matter which he is not competent to perform. The Board is also impressed with Petitioner's acceptance of responsibility for his past mistakes, which is indicative of a satisfactory level of professional rehabilitation. As a condition precedent to reinstatement, though, Petitioner must reimburse the Board for its costs incurred in the prior disciplinary matter. Petitioner has agreed to do so, if required. (Factual Findings 1-9.)

ORDER

The petition for reinstatement is granted. Certificate No. 38745, previously issued to Petitioner James D. Sharpe, is reinstated. As a condition precedent to the reinstatement of the certificate, however, Petitioner must pay to the Board in full the costs incurred in the investigation and prosecution of the prior disciplinary matter in the amount of \$3,092.62.

This Decision shall be effective April 12, 2011.

Dated: April 13, 2011


Sarah Anderson, CPA, President,
California Board of Accountancy
Department of Consumer Affairs

1 BEFORE THE
2 BOARD OF ACCOUNTANCY
3 DEPARTMENT OF CONSUMER AFFAIRS
4 STATE OF CALIFORNIA

4 In the Matter of the Accusation) No. AC-92-39
5 Against:)
6) DEFAULT DECISION
7 JAMES D. SHARPE)
8 P.O. Box 1562)
9 Marysville, CA 95901)
10 License No. 38745,)
11)
12 Respondent.)

10 Respondent James D. Sharpe, having been served with the
11 Accusation, Statement to Respondent, and Notice of defense form
12 as provided by Government Code sections 11503 and 11505, and
13 having failed to file a Notice of defense within the time allowed
14 by section 11506 of said Code, and the default of said Respondent
15 having been duly noted, the Board of Accountancy has determined
16 that Respondent has waived his rights to a hearing to contest the
17 merits of said Accusation, that Respondent is in default, and
18 that this agency will take action on the Accusation and evidence
19 herein without a hearing, and makes the following findings of
20 fact:

21 FINDINGS OF FACT

- 22 1. The Accusation was made and filed by Carol B.
23 Sigmann in her official capacity as Executive Officer, Board of
24 Accountancy, Department of Consumer Affairs, State of California.
25 2. On September 23, 1983, the Board of Accountancy
26 issued certified public accountant license No. 38745 to James D.
27 Sharpe. The license expired December 1, 1988, and is not
28 currently in full force and effect.

1 3. Respondent filed no Notice of Defense at any time.

2 4. In or about 1984, Respondent performed an audit
3 for the City of Wheatland for the fiscal year ended June 30,
4 1984. Respondent continued to perform audits for the City of
5 Wheatland through the fiscal year ended June 30, 1988.

6 5. Sometime after the audits were completed, the
7 Office of the Controller, State of California, notified the City
8 of Wheatland that the audits performed by Respondent for the
9 fiscal years ended June 30, 1987 and June 30, 1988 were
10 deficient.

11 6. Respondent is subject to disciplinary action
12 pursuant to section 5100 of the Business and Professions Code in
13 that he has violated subsection (c) of section 5100 by committing
14 acts that individually and collectively constitute gross
15 negligence in the practice of public accountancy as more
16 particularly alleged hereinafter:

17 A. On or about November 30, 1987 and
18 September 12, 1988, Respondent issued audit reports for the City
19 of Wheatland for the fiscal years ended June 30, 1987 and
20 June 30, 1988. In these reports, Respondent stated that his
21 examinations of the balance sheets of the various funds and block
22 grant accounts as of June 5, 1987 and June 30, 1988, and the
23 related statements of revenues, expenditures, and changes in fund
24 balances, were made in accordance with generally accepted
25 auditing standards. Respondent further indicated that his
26 examination included such tests of the accounting records and
27 other such auditing procedures he considered necessary in the
28 circumstances.

1 B. Respondent was grossly negligent in the
2 preparation of the audit reports in that he failed to modify
3 those reports to state that the entity's basic financial
4 statements do not include the prescribed general purpose
5 financial statements: namely, combined balance sheets, all fund
6 types and account groups; combined statements of revenues,
7 expenditures, and changes in fund balances, all governmental fund
8 types and expendable trust funds; combined statements of
9 revenues, expenditures, and changes in fund balances -- budget
10 and actual, general and special revenue fund types.

11 C. Respondent was grossly negligent in the
12 preparation of said audit reports in that he failed to modify the
13 reports to state that the statements of revenue and expenditures
14 were not in proper format.

15 D. Respondent was grossly negligent in the
16 practice of public accountancy in that his audit reports do not
17 state that the financial statements do not include footnote
18 disclosures required under generally accepted accounting
19 principles.

20 E. Respondent was grossly negligent in the
21 practice of public accountancy in that he renders no opinions
22 regarding supplementary information, which was not properly set
23 apart from the basic financial statements.

24 F. Respondent was grossly negligent in the
25 practice of public accountancy in that he failed to prepare the
26 reports on internal control structure required under generally
27 accepted accounting principles for state and local governments
28 and under The Single Audit Act of 1984.

1 G. Respondent was grossly negligent in the
2 preparation of the audit reports in that his working papers:
3 (1) failed to document that the work was adequately planned and
4 supervised, evidencing observance of the first standard of field
5 work; (2) failed to provide sufficient competent evidential
6 matter to afford a reasonable basis for an opinion, demonstrating
7 observance of the third standard of field work.

8 DETERMINATION OF ISSUES

9 1. The Board of Accountancy has jurisdiction to
10 proceed in this matter pursuant to Business and Professions Code
11 section 118(b).

12 2. Based upon the foregoing Findings of Fact,
13 Respondent has subjected his license to discipline under Business
14 and Professions Code section 5100(c) by committing acts that
15 individually and collectively constitute gross negligence in the
16 practice of public accountancy.

17 ORDER

18 WHEREFORE, the Board of Accountancy issues an order
19 revoking certified public accountant license number 38745 issued
20 to James D. Sharpe. Said order is based on the violations set
21 forth in paragraph 4, 5, 6, taken individually and
22 collectively.

23 Respondent shall not be deprived of making any further
24 showing by way of mitigation. However, such showing must be made

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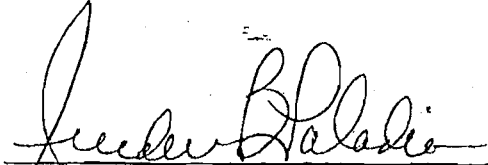
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1 to the Board of Accountancy prior to the effective date of this
2 decision.

3 This decision shall become effective on the 16th day
4 of March, 1994.

5 Dated and signed this 14th day of February,
6 1994.

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9 PRESIDENT
10 Board of Accountancy
11 Department of Consumer Affairs
12 State of California
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1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JOEL S. PRIMES, Supervising
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Sacramento, California 94244-2550
5 Telephone: (916) 324-5339
6 Attorneys for Complainant.

7
8 BEFORE THE
9 BOARD OF ACCOUNTANCY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the) No. AC-92-39
12 Accusation Against:)
13 JAMES D. SHARPE)
14 1360 Gray Avenue, #S)
Yuba City, CA 95991)
15 License No. 38745)
Respondent.)
16

17 Complainant Carol B. Sigmann (hereinafter
18 "Complainant") alleges as follows:

19 1. Complainant is the Executive Officer of the
20 California State Board of Accountancy ("Board") and makes and
21 files this Accusation solely in her official capacity, and in no
22 other capacity.

23 LICENSE STATUS

24 2. On or about September 23, 1983, Certified Public
25 Accountant License No. 38745 was issued by the Board to James D.
26 Sharpe ("Respondent"). Said certificate is not currently in
27 force and effect and expired on December 1, 1988.

28 3. Business and Professions Code section 5100

1 provides that the Board may revoke, suspend, or refuse to renew
2 any permit or certificate issued by the Board, or may censure the
3 holder of any such permit or certificate for unprofessional
4 conduct.

5 4. Business and Professions Code section 5100(c)
6 provides, in part, that unprofessional conduct includes, but is
7 not limited to, gross negligence in the practice of public
8 accountancy or in the performance of the bookkeeping operations
9 described in Code section 5052.

10 5. Business and Professions Code section 5107
11 provides, in part, that the Executive Officer of the Board may
12 request the administrative law judge, as part of the proposed
13 decision in a disciplinary proceeding, to direct any holder of a
14 permit or certificate found to be in violation of section 5100(c)
15 to pay to the Board all costs of investigation and prosecution of
16 the case, including, but not limited to, attorneys' fees.

17 6. Business and Professions Code section 118(b)
18 provides that the suspension, expiration, or forfeiture by
19 operation of law of a license issued by a board in the
20 department, or its suspension, forfeiture, or cancellation by
21 order of the board or by order of a court of law, or its
22 surrender without the written consent of the board, shall not,
23 during any period in which it may be renewed, restored, reissued,
24 or reinstated, deprive the board of its authority to institute or
25 continue a disciplinary proceeding against the licensee upon any
26 ground provided by law or to enter an order suspending or
27 revoking the license or otherwise taking disciplinary action
28 against the licensee on any such ground.

1 7. In or about 1984, Respondent performed an audit
2 for the City of Wheatland for the fiscal year ended June 30,
3 1984. Respondent continued to perform audits for the City of
4 Wheatland through the fiscal year ended June 30, 1988.

5 8. Sometime after the audits were completed, the
6 Office of the Controller, State of California, notified the City
7 of Wheatland that the audits performed by Respondent for the
8 fiscal years ended June 30, 1987 and June 30, 1988 were
9 deficient.

10 9. Respondent is subject to disciplinary action
11 pursuant to section 5100 of the Business and Professions Code in
12 that he has violated subsection (c) of section 5100 by committing
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15 particularly alleged hereinafter:

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3 supervised, evidencing observance of the first standard of field
4 work; (2) failed to provide sufficient competent evidential
5 matter to afford a reasonable basis for an opinion, demonstrating
6 observance of the third standard of field work.

7 WHEREFORE, Complainant requests that a hearing be held
8 on the matters alleged in the Accusation, and that following the
9 hearing, the Board issue a decision:

10 1. Revoking or suspending CPA License No. 38745,
11 heretofore issued to Respondent James D. Sharpe;

12 2. Ordering Respondent to pay to the Board all
13 reasonable costs of investigation and prosecution of this case,
14 including, but not limited to, attorneys' fees.

15 3. Taking such other and further action as the Board
16 deems appropriate to protect the public health, safety and
17 welfare.

18
19 Dated: *September 29, 1993*

Carol B. Sigmann
CAROL B. SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant